

**REPORT BY THE
AUDITOR GENERAL
OF CALIFORNIA**

**THE CALIFORNIA PUBLIC UTILITIES COMMISSION
CAN IMPROVE ASPECTS OF ITS PROGRAM
TO COMPENSATE INTERVENORS**

**The California Public Utilities Commission
Can Improve Aspects of Its Program
To Compensate Intervenors**

P-069, January 1992

**Office of the Auditor General
California**



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January 8, 1992

P-069

Honorable Robert J. Campbell, Chairman
Members, Joint Legislative Audit Committee
State Capitol, Room 2163
Sacramento, California 95814

Dear Mr. Chairman and Members:

The Office of the Auditor General presents its report concerning the California Public Utilities Commission's Intervenor Compensation Program. The report indicates a need for the commission to compensate intervenors for their participation in commission proceedings within the time requirements of the law. The report also identifies statutory restrictions and commission applications of the law that may inhibit intervenor participation in commission proceedings.

Respectfully submitted,

KURT R. SJOBERG
Auditor General (acting)

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Summary

Results in Brief To promote public participation in proceedings involving utility company rates, the California Public Utilities Commission (commission) has established a compensation program that provides funding to customers or customer groups who formally participate in commission proceedings to represent general or special interests of customers. These customer representatives are known as intervenors. Intervenors are granted funding if they have established significant financial hardship and have made a unique and substantial contribution to a decision adopted by the commission. To receive funding from the program, intervenors must first request and be found eligible for funding and then request and be awarded compensation. During our review of the commission's program, we noted the following conditions:

- Intervenors have difficulty being reimbursed for all of their costs related to participation in commission proceedings because of statutory restrictions and the commission's methods of determining compensation amounts;
- The statutory requirement that compensation only be awarded to intervenors after a commission decision in a proceeding prohibits the commission from allocating any funding to intervenors before a decision to ease the financial burden imposed by lengthy proceedings;
- In 32 (84 percent) of the 38 compensation decisions completed during the last three fiscal years, the commission exceeded the decision deadlines allowed by the Public Utilities Act by an average of four months;

- In 24 (63 percent) of the 38 completed compensation decisions we reviewed, intervenors did not file for compensation within 30 days of the case decision. However, in all but 6 of these 24 cases, the commission noted and allowed exception to the intervenors' filing deadlines;
- The commission is not required to determine intervenors' eligibility for compensation at any specific time after the intervenors have filed eligibility requests. Moreover, the law allows intervenors to request eligibility for compensation after the intervenor's participation in a proceeding. As a result, intervenors may participate in lengthy proceedings without any commission assurance that they will be eligible to request compensation for their contributions; and
- Intervenors filed 18 (35 percent) of 51 eligibility requests late because some of the intervenors appear to be confused about when to file because of unclear statutory deadlines.

Background Through its regulatory powers over utility and transportation companies, the commission is responsible for ensuring that the public is provided with adequate and safe utility and transportation services at the lowest reasonable rates. Utility services are regulated through commission orders issued as a result of investigations, studies, and public hearings related to the adequacy of services and facilities. The public hearings are conducted under the supervision of the commission's Administrative Law Judges Division, which typically oversees three areas: applications for rate changes and other activities, complaints against utility or transportation companies, and orders instituting investigations. During the proceedings, the administrative law judges (ALJs) hear the testimony presented by all participants and then propose a decision to the commissioners. To promote public involvement in

proceedings involving utility companies, the commission established the intervenor compensation program. The current program requires the utility involved in the proceeding to pay eligible intervenors. Intervenors may receive compensation if the commission determines the intervenors' participation would create financial hardship and if the intervenor has made a unique and substantial contribution to a decision adopted by the commission. Any utility paying this award is allowed to fully recover the amount of the award through the adjustment of rates so that the full amount can be recovered within one year. From 1981 through November 1991, the commission has granted 109 awards to intervenors totaling more than \$3.3 million for their contributions in proceedings.

**Legal
Requirements
and Commission
Interpretations
Limit Intervenor
Participation**

Statutory restrictions and commission interpretations of the law limit intervenor participation in commission proceedings and limit compensation amounts. First, the law requires that the commission adopt at least part of an intervenor's presentation for the intervenor to be compensated for making a substantial contribution to a commission proceeding. Once this is established, the commission generally awards compensation for costs only related to that portion of an intervenor's presentation adopted by the commission. These conditions make it difficult for intervenors to receive reimbursement for all of their costs of participating in commission proceedings. Second, the commission recently denied compensation for the time required by intervenors to prepare the detailed compensation requests. Although the commission subsequently reversed this decision, it intends to formally review the necessity for compensating intervenors for the preparation of the compensation request. If the commission denies this compensation, it further restricts intervenors from receiving reimbursement for costs incurred while participating in commission proceedings. Finally, intervenors may have difficulty participating in lengthy proceedings because intervenors currently cannot request compensation until after the commission issues a case decision and because there is no mechanism to allocate some allowance to intervenors before or during a proceeding.

**The Commission
Seldom Issues
Timely
Compensation
Decisions**

The law requires that the commission make a decision on the merits of an intervenor's compensation request within 75 days of the request, or if the commission has requested an audit of the intervenor's records, the compensation decision must be issued within 50 days after the filing of the audit report, whichever occurs later. Of the 38 completed compensation decisions we reviewed, the commission exceeded the decision deadline by an average of four months in 32 (84 percent) of these cases. When the commission delays compensation decisions, intervenors are less able to meet the financial obligations necessary to ensure their participation in commission proceedings because of the length of time they must wait for compensation. As a result, intervenors may reduce or discontinue their participation, and the commission's goal of protecting the public's interest may be adversely affected. Additionally, in 24 (63 percent) of the 38 cases, intervenors did not file compensation requests within 30 days of the case decision, as required by law. However, in all but 6 of these 24 cases, the commission noted and allowed exceptions to the intervenors' filing deadlines.

**The Process
for Determining
Eligibility Lacks
Useful Time
Requirements**

Intervenors filed 18 (35 percent) of 51 eligibility requests for compensation late because some of the intervenors appear to be confused about when to file because of unclear statutory deadlines. Moreover, unlike some other state agencies with intervenor programs, the commission is not required to determine eligibility for intervenors at any specified time during the proceedings in which the intervenors are participating. Of 51 eligibility decisions we reviewed, the commission took an average of nine months to issue the decisions. In 30 (65 percent) of the 46 decisions in which the commission issued both an eligibility decision and a final order or decision, the commission issued eligibility decisions on or after the date of the case decision. Because of the commission's delays in issuing eligibility decisions and because many intervenors request eligibility at the end of the proceeding, nearly two-thirds of the intervenors who were awarded eligibility in the last three fiscal years participated in lengthy proceedings without knowing whether they were even eligible to request compensation.

Recommendations

To improve its intervenor compensation program, the commission should take the following actions:

- Continue to reimburse intervenors, as a reasonable cost of participation, for the costs of preparing their compensation requests;
- Require ALJs to complete the proposed compensation decisions promptly; and
- Ensure that both intervenors and ALJs are aware of the dates to file eligibility and compensation requests.

To ensure that the legislative intent of the intervenor compensation program is being achieved, the Legislature should take the following actions:

- Determine whether the current definition of substantial contribution and the commission's application of this definition are consistent with the intent of the program;
- Determine whether the commission's current practice of prorating intervenors' expenses by their degree of success on each issue in which they participate is consistent with the intent of the program;
- Determine whether advanced funding should be provided to intervenors and, if so, develop an alternative funding mechanism to provide initial start-up loans or interim loans, or both, to credible intervenors;
- Determine whether there is a necessity for requiring a commission ruling to establish an intervenor's eligibility to request compensation; and
- Require the commission to rule on eligibility requests within a specified time.

**Agency
Comments**

The commission recognizes the need to ensure broad intervenor participation in commission proceedings and to provide compensation to intervenors to the fullest extent allowed by law. The commission agrees that the program can be improved and that our recommendations can help streamline the intervenor compensation process, reduce unnecessary statutory restrictions, and possibly provide additional resources to expedite the process.

Introduction

The California Public Utilities Commission (commission) was established by Article XII of the California Constitution to regulate public utilities and transportation companies in the State. The purpose of the commission is to provide the public with adequate and safe utility and transportation services at the lowest reasonable rates. Utility services are regulated through commission orders issued as a result of investigations, studies, and public hearings related to the adequacy of services and facilities.

The commission is made up of five members, appointed by the governor for terms of six years. The commission appoints an executive director who is responsible for coordinating and supervising the commission's operations and affairs. To perform its operations, the commission had an \$80.9 million budget in fiscal year 1990-91 and was authorized 1,040 positions.

The commission has established various divisions to achieve its objectives. For instance, the Public Affairs Division assesses consumer concerns and handles informal complaints. The Division of Ratepayer Advocates (DRA) represents the long-term interests of all utility customers through its critical review of utility expenditures and its participation in commission proceedings. The DRA is a party to all proceedings and can present evidence, testify, and cross-examine witnesses. The Legal Division of the commission represents the DRA in proceedings before the commission and provides advice and representation in all matters having to do with the regulation of the State's utilities. The Commission Advisory and Compliance Division advises the commission on a wide range of financial, economic, engineering,

and regulatory issues. In addition, the Legislature has appointed the public advisor, who reports directly to the commissioners. The public advisor provides procedural information and advice to individuals or groups who may want to participate in commission proceedings. Figure 1 illustrates the commission's various divisions.

California Public Utilities Commission Organizational Structure for 1991

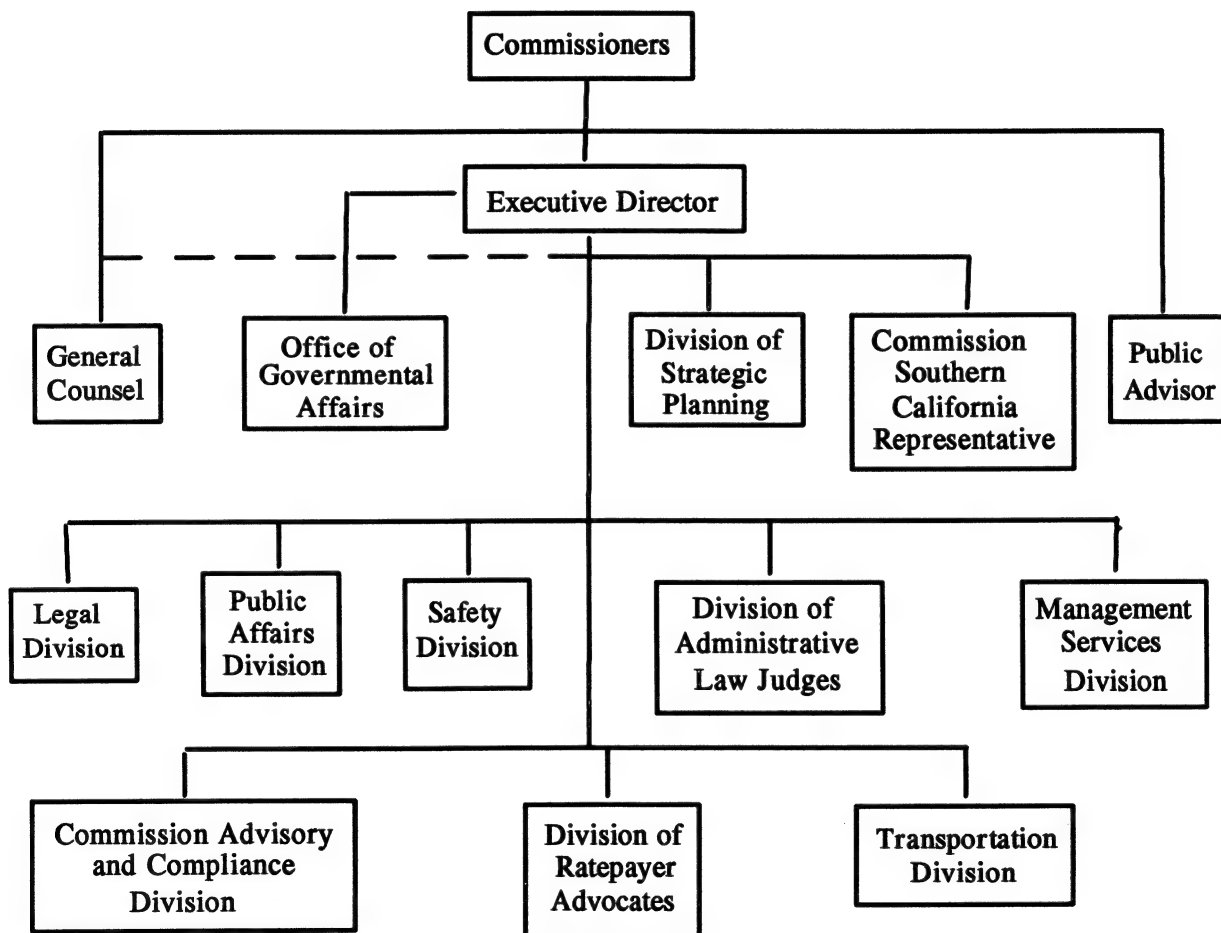


Figure 1

A critical component in assisting the commission in its regulatory functions is the Division of Administrative Law Judges (ALJ division). As the hearing officers for most commission proceedings, the administrative law judges (ALJs) assist the commissioners in discharging the functions conferred upon the commission by the California Constitution and various statutes. Through proceedings, the ALJs develop recommendations and propose decisions that they submit to the commission for approval. During fiscal year 1990-91, the commission had an average of 32 ALJs, who each managed a caseload of approximately 21 proceedings per month.

Commission Proceedings

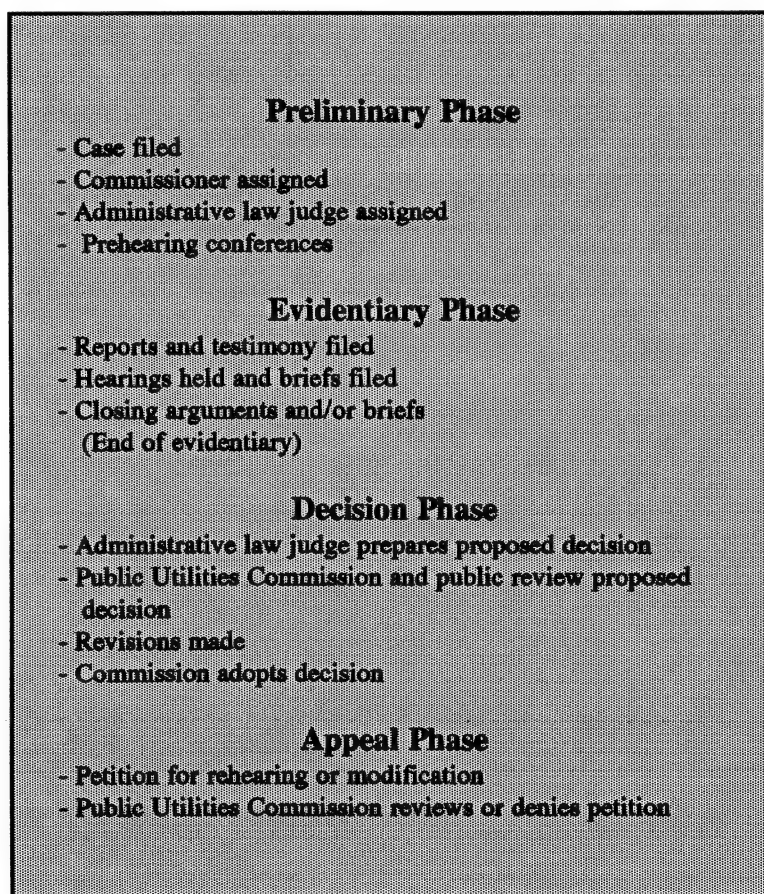
Essentially, the commission and the ALJ division oversee three areas: complaints, orders instituting investigations or rule making, and applications. Complaints may be filed by any person, business, or government entity that believes a utility or transportation company has violated the Public Utilities Act or an order or regulation of the commission. Orders instituting investigations or rule making are initiated by the commission to examine specific issues that may lead to new legislation, changes in policies and procedures, enforcement activities, or new programs. Applications are filed by utilities to accomplish a range of activities, such as securing a rate change, building a new power plant or transmission line, transferring ownership, issuing stock, or insuring debt.

Although commission proceedings vary widely in length, complexity, and number of participants, they typically follow a standard progression. Initially, the assigned ALJ calls a prehearing conference to schedule hearings, determine participants, and decide the issues on which the parties intend to focus. Thereafter, the ALJ holds evidentiary hearings, which resemble formal courtroom proceedings. Parties may present evidence through direct testimony, exhibits, and expert witnesses. At the end of evidentiary hearings, parties may file briefs summarizing the key points of their testimony. In cases of widespread interest, including all general rate increase cases, the commission holds public participation hearings.

Once all the evidence has been submitted, the ALJ closes the evidentiary record and writes a proposed decision to submit for the commission's consideration. The commission may agree with the proposed decision or submit modifications to it. The commission then meets in a public session to vote on a final decision.

If a party believes that the commission's decision contains a legal error, the party can file a request for a rehearing. The commission may deny the request, modify the decision, or order additional hearings. Thereafter, if the party is not satisfied with the outcome, the party may file a petition for a writ of review with the California Supreme Court. Figure 2 illustrates the commission's proceeding process.

Figure 2



Commission proceedings are usually more complex than described above. Commission proceedings may include several phases of hearings and several interim decisions. Sometimes, several proceedings are consolidated to deal with specific issues that may overlap among different proceedings. Some phases of a proceeding have legally mandated deadlines; however, the duration of some other phases is left to the discretion of the ALJ. For instance, commission rules require the ALJ to submit a decision to the commission within 90 days after a case has been submitted. However, the case is not considered to have been submitted until all the evidence has been presented, subject to the determination of the commission or the ALJ. As a result, a commission proceeding may last an indefinite length of time; many proceedings last several years.

Intervenor Compensation

Commission proceedings involve many different participants. For instance, utility companies maintain legal counsel to represent their interests in commission proceedings, and the commission's Division of Ratepayer Advocates presents testimony and evidence intended to serve the best long-term interests of all utility ratepayers. In addition, customers or customer groups may formally participate in commission proceedings to represent general or special interests of residential customers. These customer representatives are known as intervenors.

Recognizing that effective public participation is an essential element in protecting the public's interest, the commission established an intervenor funding program to compensate parties who provide effective public participation in commission proceedings affecting utility rates. The intervenor funding program does not cover transportation matters. Currently, the commission has two primary mechanisms to compensate intervenors for advocate and expert witness fees and other reasonable costs of participation. The smaller source of compensation funds is the Advocates Trust Fund (trust). The trust was established in 1981 to defray expenses directly related to litigation or representation of consumer interests in complaint cases, where no other means or fund is available for award of fees. The commission administers the

trust fund and may only grant an award to complainants who have made a direct, primary, and substantial contribution to the result of the case. When granting awards, the commission must consider the societal importance of the issues resolved and the number of people who will benefit as a result of the decision. From the establishment of the trust to June 30, 1991, the commission has granted five awards totaling \$83,078 from the trust to individuals and groups.

The primary source of intervenor compensation is the intervenor compensation program, which the commission developed within the statutory framework of the Public Utilities Act, Article 5, Sections 1801 through 1808. Before the implementation of this legislation on January 1, 1985, the commission operated a similar intervenor compensation program under Title 20, Article 18.6 of the California Administrative Code, now known as the California Code of Regulations. The legislation codified many of the features of the commission's earlier funding system. The current intervenor compensation program provides after-the-fact funding for reasonable costs of participation to groups or individuals whose participation would create significant financial hardship and who have made a unique and substantial contribution to a commission decision affecting utility rates. Any award made under these provisions must be paid by the utility that is the subject of the hearing or proceeding. The utility company paying the award is allowed by law to fully recover the amount of the award from its ratepayers. The recovery of the award is accomplished through a rate adjustment that can be made within one year following the award date. Figure 3 presents the commission's procedures for intervenor compensation.

Figure 3

**Commission Intervenor Compensation Procedures
According to Public Utilities Code, Article 5,
Sections 1801 through 1808**

Eligibility Request

Intervenor must file for eligibility to request compensation:
Within 30 days of the first prehearing conference; or,
Within 45 days after the close of the evidentiary record; or,
Under specific circumstances, the commission may determine
the process.

Eligibility Decision

Any party in the proceeding may respond to the request within
30 days of the filing.
The commission's decision on eligibility is not required within
any specific time.

Case Decision

Commission issues interim or final order or decision in the
proceeding.

Compensation Request

An eligible intervenor must file for compensation within 30 days
of the case decision.
Any party in the proceeding may respond to the request within
30 days of the filing.
The commission may audit the records of the intervenor to
substantiate the request.
Any party in the proceeding may respond to the audit report
within 20 days after the report is filed.
The intervenor may respond to any comments regarding the
compensation request within 15 days after the comments are
submitted.
The commission must issue a compensation decision within 75
days of the filing of the request, or within 50 days of the filing
of the audit report, whichever is later.

Compensation Payment

The utility company that is the subject of the hearing must pay,
from ratepayer funds, the specified amount to the intervenor
within 30 days of the compensation decision.

Intervenors represent a variety of consumer interests. Some intervenor groups have organized to represent a specific issue for a single case whereas others are ongoing participants in commission proceedings. Besides compensation earned through successful participation in commission proceedings, intervenors typically have other sources of funding such as donations and grants.

Intervenors have made valuable contributions to commission proceedings on issues affecting utility customers and have saved the State's ratepayers far more than the cost of the program. While we could not quantify the total savings provided by intervenors to the State's ratepayers, in a single 1990 compensation decision, the commission recognized that a forecasting model presented by an intervenor resulted in a savings to the utility and the ratepayer of approximately \$27 million. By contrast, the awards received by intervenors from January 1, 1981, through November 30, 1991, have amounted to approximately \$3.3 million.

The table below summarizes the amount of compensation awards in each year since 1981. In addition, Appendix A lists all the compensation awards granted to intervenors, as reported by the commission, since 1981.

**Intervenor Compensation Awards
From January 1, 1981 Through November 30, 1991**

Year	Total Award Amount	Total Number of Awards
1981	\$ 79,483	2
1982	91,973	2
1983	24,650	1
1984	294,399	6
1985	139,899	13
1986	513,075	19
1987	339,598	9
1988	373,962	12
1989	399,578	12
1990	447,570	13
1991*	129,354	5
1991**	508,339	15
Total	\$3,341,880	109

Note: The awards presented in this table do not include awards made from the Advocates Trust Fund.

* Totals are from January 1, 1991, through June 30, 1991.

**Totals are from July 1, 1991, through November 30, 1991.

The commission has also recognized intervenors for their substantial and unique contributions to the development of commission decisions affecting the public welfare. For example, in one proceeding, the commission acknowledged that two intervenors contributed to the commission's decision regarding the regulation of charges for information access services, also known as "976" calls. These calls involve automatically billed charges to a customer who dials a telephone number with a 976 prefix and receives a recorded message, such as "dial-a-porn" or "message from Santa." In one of the commission decisions, the commission stated that several of its tariff revisions were based on recommendations from one of the two intervenors. In particular, the commission adopted recommendations allowing customers to disallow charges for calls made by minors, and it ordered that all advertising for 976 numbers directed at children contain a message requiring parental consent. In another decision during the proceeding, the commission accepted an intervenor's argument that a blocking charge for residential subscribers of \$2 per customer for 976 numbers would be inequitable and reduced this charge to one cent.

Scope and Methodology

The purpose of this audit was to review the commission's process for awarding compensation to intervenors. We reviewed the intervenor compensation process to determine the extent of compensation delays, and what effect, if any, delays and other problems with the program may have on intervenor participation.

We reviewed commission documents and case files to determine the number of compensation awards the commission has issued since 1981 and to determine the number of pending eligibility and compensation requests filed by intervenors. We also interviewed intervenors and commission staff to ensure the list was complete.

We validated the number of pending and completed intervenor compensation cases for the last three fiscal years, ending June 30, 1991. We found 30 pending cases and 38 completed cases for this period. We reviewed the case records for each of the

38 completed decisions involving intervenors to determine whether the commission and the intervenors complied with the requirements of the Public Utilities Act. Particularly, we evaluated each step of the compensation process to determine whether intervenors met the filing requirements to request eligibility and compensation and whether the commission met deadlines for issuing compensation decisions. To determine the cause for any untimely filings or decisions, we reviewed case documents and interviewed ALJs and intervenors. In addition, we reviewed the case documents to determine the amount of compensation requested and awarded to intervenors. However, we did not audit these figures.

For the 30 pending cases, we also reviewed the case records. However, since the commission had not yet issued final decisions in these cases, we included them in our review only to the point where they were in the process.

For a sample of 11 late compensation decisions from the 38 cases we reviewed, we evaluated the compensation decision process at the commission. For these cases, we reviewed the time each ALJ took to make a decision regarding a request for compensation and the amount of time the commission took to issue a compensation decision once an ALJ had submitted the proposed decision. In addition, we reviewed case documents and interviewed ALJs to determine the cause for any delays.

During our review, we also conducted a survey of 26 intervenors who participated in commission proceedings. With each intervenor, we discussed the effect compensation delays and program restrictions had on intervenor participation for each proceeding in our review period. In addition, we asked intervenors to identify any proceedings in which they did not participate or for which their participation was limited because of problems with the intervenor compensation program. We also requested documentation from intervenors to support the conditions that they claimed caused them to not participate or that limited their participation; however, in most cases the intervenors' documentation was limited to the statements the intervenors provided regarding the conditions under which they operate.

We also reviewed the provisions requiring utility companies to pay intervenors within 30 days of the commission's compensation decision. To determine whether the utility companies were compensating the intervenors within the law's time requirements, we asked the intervenors whether they had experienced difficulties receiving payments from the utility companies. Since only one respondent stated that the payment took longer than the 30 days allowed by law, we did no further testing in this area.

To compare the cost of intervenor participation with that of utility companies' participation in commission proceedings, we requested information from five utility companies that participated in one or more of six proceedings that occurred during our review period. We compared this data with the compensation paid to the commission's staff and to the compensation requested by intervenors who participated in the same proceedings, and we have included this information in Appendix B.

Finally, we identified and reviewed the policies and procedures for the intervenor compensation programs at the Department of Insurance and the State Energy Resources Conservation and Development Commission to contrast those policies and procedures with those of the commission's intervenor compensation program.

Chapter 1 Statutory Restrictions and the Commission's Interpretations of the Law Hinder Intervenor's Participation in Commission Proceedings

Chapter Summary

The intervenor compensation program was established to encourage public participation in the proceedings of the California Public Utilities Commission (commission), thereby assisting the commission in meeting its goal of protecting the public's interest. However, we noted three circumstances in which, because of statutory restrictions and commission interpretations of the law, the commission has reduced the amount of compensation awarded to intervenors and discouraged intervenor participation in the commission's proceedings. First, the law requires that at least part of an intervenor's argument or specific recommendation be adopted in a commission order or decision for the commission to recognize an intervenor's substantial contribution and award compensation. Then, the commission generally awards compensation only for the portion of the intervenor's costs of participation related to those arguments or recommendations. This limits the compensation intervenors can receive. Second, the commission recently denied compensation for the time required by intervenors to prepare the detailed compensation requests. Although the commission subsequently reversed this decision, it intends to formally review the issue of compensating intervenors in the future for the preparation of the compensation requests. Finally, the law requires a decision in a proceeding before an intervenor may request compensation, and the commission has no mechanism to allocate funds to intervenors before or during a proceeding to ease the fiscal impact of participating in lengthy proceedings. As a result of these statutory restrictions and the commission's interpretations of the law, intervenors' compensation requests for the cost of their presentations before the commission are often reduced. Furthermore, intervenors can be hindered from participating in proceedings because participation in commission proceedings lasts an average of 27 months before intervenors request compensation.

Background Recognizing that effective public participation is an essential element in the protection of the public's interest, the commission established the intervenor compensation program. The program was established to encourage public participation in commission proceedings. This participation, in turn, aids the commission in meeting its goals of protecting the public's interest, including providing the public with utility services at the lowest reasonable rates. The program was subsequently codified, in part, into Sections 1801 through 1808 of the Public Utilities Act. These sections establish the basic requirements for the provision of reasonable advocate fees, expert witness fees, and other costs incurred by an intervenor in any commission rate hearing or rate proceeding. The sections also describe the requirements for qualifying for compensation, including a requirement to establish the intervenor's substantial contribution to an order or decision in a proceeding to be compensated for certain reasonable costs associated with the intervenor's participation. In addition, the sections establish the timing for requesting and awarding compensation. Further, the sections establish the commission's responsibility for using its judgement in the determination of when an intervenor has complied with the requirements.

To fulfill the requirements of the law, the commission has empowered administrative law judges (ALJs) to assist it in discharging the quasi-judicial functions conferred upon it. The ALJs are responsible for overseeing the commission's proceedings and for preparing decisions for the commission's approval regarding the findings of the proceedings and concerning the contribution of intervenors during the proceedings. The ALJs are guided in their recommendations by previous decisions of the commission, as well as by the requirements of the Public Utilities Act.

**Award
Reductions
Due to the
Commission's
Interpretation
of Reasonable
Expenses**

Section 1801 of the Public Utilities Act states that the purpose of the intervenor compensation program is to provide compensation for reasonable fees for advocates and expert witnesses and for other reasonable costs of participation in commission proceedings. Section 1802(a) further indicates that the commission will determine the amount of compensation awarded to intervenors. For the commission to determine whether an intervenor is entitled to compensation, it must first determine whether the intervenor has made a substantial contribution in the proceeding in which the intervenor is participating. The Public Utilities Act provides that an intervenor has made a substantial contribution, when, in the judgment of the commission, the intervenor's presentation substantially assisted the commission in the making of an order or decision because the commission's order or decision adopted in whole or in part one or more arguments or specific policy or procedural recommendations presented by the intervenor.

Because the law requires that the commission determine whether an intervenor has made a substantial contribution to an order or decision and whether the intervenor's expenses were reasonable, the commission is responsible for establishing criteria that it will use to make the determinations. The commission's application of the requirement of the law regarding substantial contribution is generally that an intervenor's argument, contention, or recommendation must be adopted, at least in part, in a commission decision before the intervenor has met the conditions stated in Section 1802(g) of the Public Utilities Act. Therefore, as stated in a commission decision, even if the commission acknowledges that an intervenor's participation is valuable and enhances the proceeding, it may not award compensation unless it adopts an argument or specific recommendation.

Once the commission has determined an intervenor has made a substantial contribution in a proceeding, the commission is required to determine the amount of compensation that will be paid to the intervenor. The commission's process for determining compensation is based on its interpretation of the law requiring it to determine which costs incurred by the intervenor during the proceeding are reasonable costs of participation. According to the chief ALJ, because the costs of intervenor compensation are

ultimately paid by the utility ratepayer, the commission believes it has a responsibility not to burden utility ratepayers with intervenor costs unless the intervenor clearly demonstrates the value of its contribution to the commission decision. Therefore, the commission has generally determined that intervenor compensation should be decided on the level of success of the issues the intervenor has presented. According to a commission decision published in September 1990, when a party has prevailed on all, or nearly all, the issues it has raised, the commission allows compensation for all the hours reasonably incurred. However, according to this decision, when a party has achieved only partial success by prevailing on only some of the issues it has raised, the commission allows partial compensation in relation to the degree of success obtained. For instance, if an intervenor prevails on only one of eight issues presented to the commission, the intervenor may only receive compensation for its expenses related to that issue.

The commission's method for determining the compensation awarded to intervenors makes it difficult for intervenors to recover all expenses incurred while participating in commission proceedings. This difficulty occurs because the commission will generally only compensate the intervenors for the costs directly associated with the part of an intervenor's presentation that was adopted by the commission. As a result, when an intervenor is only partially successful in a presentation, the intervenor often does not recover the specific expenses related to the issues in which it did not prevail. Moreover, it may not recover a proportionate share of the general preparation costs required for the preparation of all the issues in which the intervenor participated. General preparation costs may include attending preliminary hearings and preparing exhibits and presentations.

For example, in one proceeding we reviewed, an intervenor that had successfully participated in many prior proceedings requested approximately \$50,500 for its participation in a commission proceeding. Of that amount, \$10,700 was for hearing and post-hearing activities. According to the commission's decision, this request reflected about one-third of the intervenor's hours spent on these activities, an amount the intervenor believed was proportionate to the level the intervenor had prevailed on

issues in the proceeding. In addition, approximately \$33,600 of the requested amount was for general prehearing expenses devoted to the discovery process and to the preparation of exhibits and presentations. In its decision addressing the compensation award, the commission adopted the intervenor's request for one-third of its hearing and post-hearing costs as reasonable. However, the commission reduced the general prehearing costs to one-eighth of the amount requested to reflect its determination that the intervenor prevailed on only one of the eight issues the intervenor pursued, and this one issue, in the commission's judgement, was not significant overall.

As a result, the intervenor was compensated approximately \$14,900 for its prehearing, hearing, and post-hearing expenses, an amount that represents approximately 23 percent of the approximately \$65,700 for the total hours the intervenor stated it had spent during the proceeding for these three expense categories. According to our calculations, the intervenor was awarded approximately \$10,700 for hearing and post-hearing costs, which is one third of \$32,100, the amount that the intervenor reduced its claim from to reflect the proportion of issues on which it prevailed, and \$4,200 for its general prehearing expenses, one-eighth of the \$33,600 requested.

Contrary to the commission's goal of protecting the public's interest through intervenor participation, intervenors stated they have been hindered in their participation in commission proceedings because of the current requirements for obtaining compensation. In a survey of intervenors, 10 (43 percent) out of 23 stated that, because the commission reduces awards if the intervenors' specific points of discussion are not accepted, the intervenors have stopped or reduced their participation in commission proceedings. When intervenors reduce their participation in the commission's proceedings, the program's goal of encouraging public participation is not met. For example, in one case, according to an intervenor, the intervenor and an associated intervenor group discontinued their participation in commission proceedings despite their previous success in those proceedings.

The intervenor stated that the commission's compensation rules and procedures effectively discouraged such intervention. The intervenor also cited reductions in compensation as a major factor in the decision to discontinue intervenor activities.

**Compensation
for Documenting
Substantial
Contribution**

Section 1802 of the Public Utilities Act allows compensation to intervenors for all or part of the reasonable costs of the intervenors' participation or intervention in commission proceedings, including the costs of obtaining judicial review. Furthermore, the law requires that the commission determine the amount of costs to be awarded based on its interpretation of what is reasonable.

During our review, we noted that part of the compensation the commission has traditionally allowed to intervenors is the cost of the intervenors' time needed to prepare compensation requests to the commission. However, in a commission decision issued on July 2, 1991, the commission reversed its opinion and stated that it would no longer allow compensation for this task.

The commission had determined as early as 1986 that there was no incentive for an individual to spend time advocating a position benefiting all ratepayers if the individual could not be compensated for it. The commission further determined that one of the elements of the time that an advocate necessarily spends is the time required to prepare the compensation request. This opinion had been reaffirmed and upheld in intervenor compensation requests until the commission reversed the trend in a decision on July 2, 1991.

In this decision, the commission stated that four years ago it had expressed an expectation that the hours claimed by intervenors for preparing the compensation requests would decrease. In that 1987 decision, the commission stated that the decrease would occur, over time, because of the use of standardized pleading formats that would reduce the number of hours spent producing the requests. However, the commission stated that, despite its earlier statement, intervenors were continuing to submit substantial claims for preparing their compensation requests. Furthermore, according to

the commission, it could find no justification for intervenors to present ratepayers with a bill for the costs of preparing a bill. As a result, the commission stated that, in the future, it would not authorize compensation for the cost of calculating and submitting a fee request.

After the commission stated its intention to no longer compensate intervenors for the preparation of their compensation requests, the commission in later decisions denied compensation for the preparation of the requests in at least four decisions involving intervenors. Specifically, for the cost of preparing requests, one intervenor was denied a total of approximately \$7,000 in three decisions, and another intervenor was denied approximately \$875 in one decision.

Since the completion of our fieldwork, two intervenors who have been denied compensation for their preparation of the compensation request have appealed the commission's decisions. As a result of these appeals, the commission has reversed its decision to deny compensation to intervenors for the preparation of the compensation request. However, in one decision, the commission announced that notwithstanding its belief that the award of this compensation may be unnecessary and inappropriate as a matter of policy, it will continue to consider reasonable requests for the preparation of compensation requests. Therefore, the commission stated that it intends to formally review this issue to ensure that affected parties have an opportunity to be heard before the commission's final decision.

During our review of all the compensation decisions completed during the last three fiscal years, we found that intervenor compensation requests consisted of two distinct elements. The first element in the request is the statement of actual costs associated with each issue the intervenor presented in the proceeding. This statement and its supporting documentation is consistently the more objective portion of the intervenor's request for compensation and is similar to a typical bill for services. The second element is the intervenor's documentation required to establish substantial contribution. This element consists of a formal pleading,

documenting each issue in which the intervenor believes that the intervenor has made a successful presentation and a justification for the expenses claimed. This pleading is unique to each proceeding and comprises the major portion of the compensation request. For example, in our review of the compensation requests for the 38 completed proceedings in our sample, intervenors documented their specific contribution to a wide range of issues such as water metering at a small water utility, safety issues during the construction of a nuclear power plant, and tariff schedules for information calling services. We determined, from our review of the documents supporting the intervenors' claims of substantial contribution, that each document was unique and each pleading required an entirely different discourse to substantiate the intervenor's contribution to the issues in each proceeding.

We also found that, before the July decision, at least 16 of the 38 intervenors who requested compensation for their participation in commission proceedings also requested compensation for filing the compensation request itself. Of those 16 intervenors, 11 (69 percent) were granted the full amount of the request by the commission after a review of the costs by an ALJ. Moreover, the commission reduced the remaining 5 intervenors' requests, but these reductions were not made because the commission found the cost to produce the compensation request was unreasonable.

We found that the commission has, in the past, generally determined that the compensation requested for compensation requests was reasonable and justified. Moreover, we found the unique nature of each filing, such as the requirements that the intervenor establish substantial contribution and list each expense, makes the document more than a standard billing for services. Therefore, given the commission's documentation requirements, we believe intervenor compensation requests for request preparation may be generally justified and should be considered.

If the commission restricts intervenors from recovering some of the costs of participating in commission proceedings, intervenors can be discouraged from participating. When intervenor participation is discouraged, the commission's goal of protecting

the public's interest through intervenor participation cannot be fully met. For example, the executive director of an intervenor group that has successfully participated in several commission proceedings stated that the commission's new policy was ill-conceived. Specifically, the executive director noted that the group had recently filed a 90-page compensation request relating to its participation in a major commission proceeding and that the prospect that it would not be compensated for almost two weeks of work serves as a clear disincentive to participate in commission proceedings.¹

**A Requirement
That
Compensation
Be Paid Only
After a
Commission
Decision
Can Reduce
Intervenors'
Participation**

The Public Utilities Act does not allow an intervenor to request compensation for participation in a commission proceeding until the commission renders a final order or decision. Then, the intervenor must file for compensation within 30 days. The commission has interpreted "final order or decision" as an order or decision that resolves the issue(s) for which compensation is sought. Because all evidence must be presented and evaluated before the commission can issue a decision, commission proceedings are often lengthy and prevent many intervenors from fully participating or, in some cases, from further participation. The average length of all commission proceedings we reviewed involving intervenors who were compensated for their participation during the last three fiscal years was almost 27 months from the time the proceeding was filed until an interim or final decision was rendered for which an intervenor sought compensation. Furthermore, intervenors who were awarded compensation for their participation waited an average of 171 additional days after filing their compensation request before they finally received their compensation decision from the commission. Although intervenors may not be incurring expenses on the date the case is filed and may, in fact, participate late in the hearing process, the length of a

¹The intervenor's compensation request has been placed on the commission's December 18, 1991, agenda for consideration. According to the chief ALJ, the commission will decide all elements of the intervenor's compensation request, including reasonable fees for the preparation of the compensation request.

commission proceeding can strain intervenors' financial resources regardless of when the intervenors actually participate. The commission is only required to control the length of the proceedings at certain points, such as the length of time required to render a compensation decision. (See Chapter 2 regarding the commission's statutory obligations for issuing compensation decisions.) The majority of the time is generally consumed in the hearing process, which takes as long as required to allow all the parties to present their arguments before the evidentiary record is closed. Figure 4 depicts the average length of time required to complete each phase of a commission proceeding for the 38 cases we reviewed.

Average Length of Time for Commission Proceedings
Involving Intervenor's Receiving a Compensation Decision
Fiscal Years 1988-89 to 1990-91

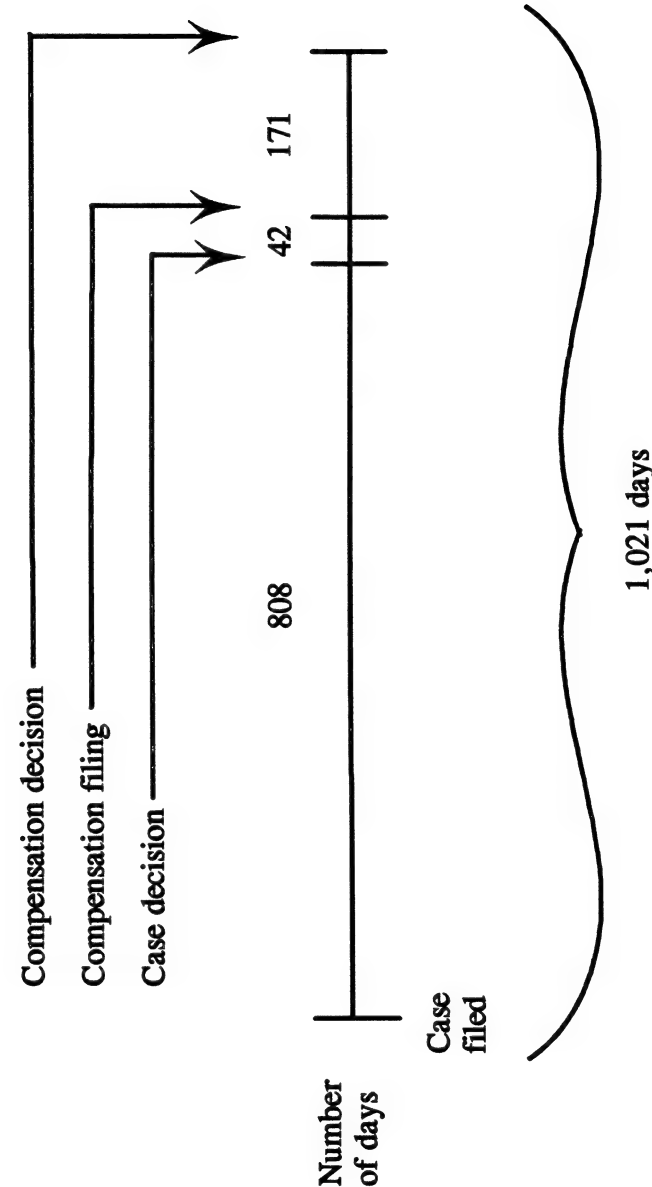


Figure 4

Since the commission allows intervenors to request compensation for any decision to which the intervenors have contributed, intervenors sometimes request compensation for their contribution to interim decisions. Therefore, the financial difficulties of the intervenors are not as great as they could be if the commission required the intervenor to wait until the commission issues a final order or decision. Nevertheless, as shown above, intervenors still go through lengthy proceedings before they request compensation.

For the intervenors, the timing and the amount of the commission's award can be a factor in how long and how much they can participate in commission proceedings. Twenty-four (92 percent) of 26 intervenors who responded to our survey question regarding their participation in commission proceedings stated their limited resources prevented them from fully participating in the number of proceedings in which they believed they could have made a substantial contribution. In addition, at least 3 intervenors stated they have ceased to participate in commission proceedings, in part, because of the length of time required for the commission to issue a compensation decision. Moreover, 23 (88 percent) of the 26 respondents stated that if funding were available from the onset of the proceeding they would use that funding to participate more fully in the commission's proceedings. As a result of the lack of initial or interim funding, intervenor participation in the commission's proceedings may be limited. To the extent that participation may be limited, the intent of the commission to protect the public's interest through the intervenor program is not being met.

The law does not provide funding to intervenors before a decision for two reasons. First, the law requires that an intervenor must establish substantial contribution in a proceeding before the commission can make its decision on whether to allow compensation. Second, the compensation awarded to intervenors comes from the utility companies participating in the proceedings, and the commission does not have the statutory authority to encumber those funds before it makes a determination concerning whether or not the intervenor has made a substantial contribution.

In contrast, intervenors participating in proceedings of the State Energy Resources Conservation and Development Commission (SEC) may request funding before they have completed their presentation to the SEC if the intervenors complete the SEC's requirements for requesting compensation and show that they have completed a measurable portion of their approved presentation for which they request compensation. The SEC is able to provide funding before the conclusion of an intervenor's presentation because a decision is not required before the SEC can determine whether to compensate an intervenor and because the intervenor compensation is paid from appropriations made from the Petroleum Violation Escrow Account.

Chapter 2 The Commission Seldom Issues Compensation Decisions to Intervenors as Quickly as Required by Law

Chapter Summary

The California Public Utilities Commission (commission) did not meet the required deadlines to issue compensation decisions in 32 (84 percent) of the 38 completed compensation cases we reviewed. The compensation decisions in these 32 cases were late by an average of four months. In addition, as of June 30, 1991, in 7 of 16 pending compensation requests we reviewed, the commission has exceeded the 75-day decision period by an average of more than one year. Additionally, intervenors did not file their compensation requests within 30 days of the case decision as required by law in 24 (63 percent) of the 38 cases. However, in all but 6 of these 24 cases, the commission noted and allowed exceptions to the intervenors' filing deadlines. The chief administrative law judge (ALJ) stated that compensation decisions are late partly because the ALJs who write the decisions must establish their priorities to balance compensation decisions with many other tasks with statutory deadlines. In addition, we found that compensation decisions are late because the commission lacks a tracking system to monitor the compensation decision process or to ensure compensation decisions are issued promptly. When the commission fails to issue prompt compensation decisions, intervenors may be less able to meet their financial obligations. As a result, intervenors may be unwilling or unable to participate in commission proceedings, and this lack of participation may, in turn, adversely affect the commission's goal of protecting the public's interest through intervenor participation.

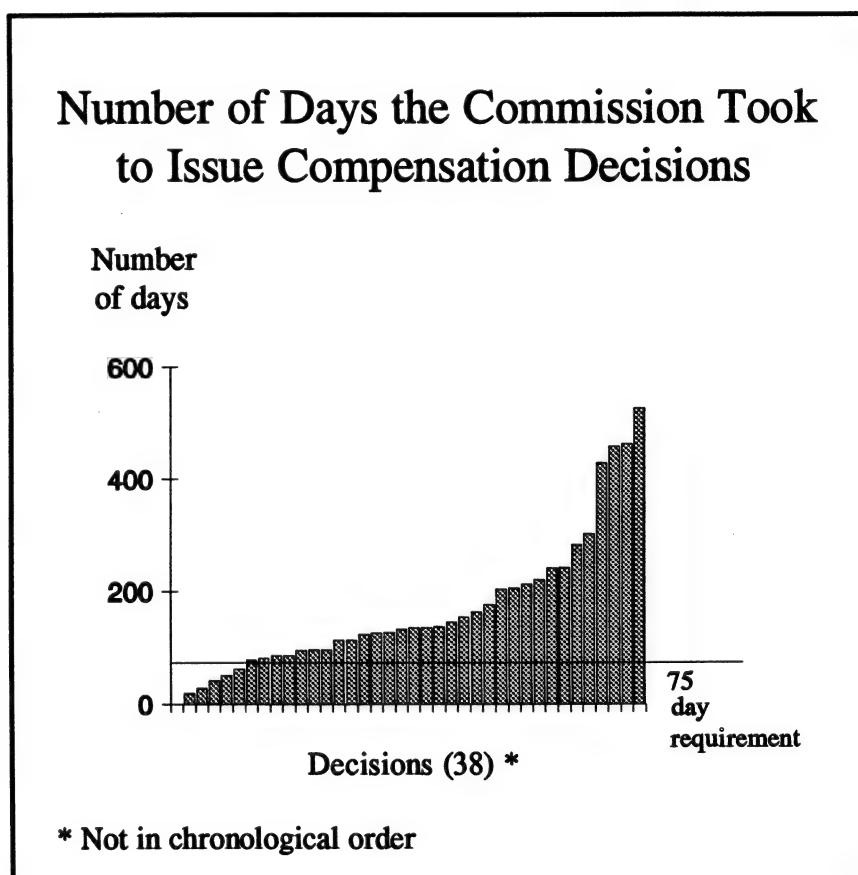
Background Proceedings of the commission vary in length and complexity. However, the proceedings in our sample lasted on average more than two years from the time the case was filed to the time the commission rendered its final order or decision. An intervenor may or may not participate throughout the entire period and may be involved in many issues, or just a single issue, in a commission proceeding. Regardless of the complexity and length of the case, or the degree of participation by an intervenor, the Public Utilities Act requires an intervenor who seeks compensation to file a request for intervenor compensation within 30 days after the final order or decision in a proceeding.

Late Compensation Decisions The Public Utilities Act, Section 1804(e), requires the commission to issue a compensation decision within 75 days after an intervenor has filed a compensation request or within 50 days of receiving an audit report if requested by the commission, whichever occurs later. The decision must include a determination of whether the intervenor has made a substantial contribution to the final order or decision in the hearing or proceeding. If the commission determines that the intervenor has made a substantial contribution, the commission must describe the contribution and determine the amount of compensation to be paid. The act also allows parties in the proceeding to respond to a compensation request within 30 days after the filing of the request.

We identified and reviewed 38 cases during the last three fiscal years for which the commission issued a decision on an intervenor's compensation request. For each of these compensation decisions, we evaluated the time between the date of the intervenor's compensation request and the date the commission issued the compensation decision. In none of the compensation decisions we reviewed did the commission request an audit of the intervenor records. Therefore, we applied the 75-day requirement

in each case.² In 32 (84 percent) of the 38 cases, the commission exceeded the required deadline for a decision. The decisions exceeded the 75-day period by an average of 120 days, or approximately 4 months, with late decisions ranging from 3 days to 458 days (approximately 15 months) beyond the mandatory deadline. Figure 5 illustrates the number of days from the intervenors' compensation requests to the commission's decision in the 38 cases we reviewed.

Figure 5



²We counted the number of days required by the commission to respond to a compensation request from the date of the filing. Furthermore, in two cases, we deducted the time the commission had to wait for additional information from the intervenors.

We also reviewed 16 pending compensation requests and found that, as of June 30, 1991, the commission had exceeded the decision deadline in 7 of these cases by an average of 410 days, or more than one year. For example, in one case, the intervenor filed a compensation request for the amount of \$31,980 on July 11, 1990. As of the end of our review period on June 30, 1991, the commission had not requested additional information or an audit from the intervenor. Although, according to the case records, almost a full year has elapsed since the intervenor's request, the commission has taken no action on the request. As of June 30, 1991, more than nine months had elapsed beyond the decision deadline established by law.³

In none of the 32 late compensation decisions we identified did the commission provide any justification for its failure to issue a decision by the deadline required by the law. Therefore, to determine why these delays occurred, we reviewed the time sheets for the ALJs who wrote 11 of the 32 delayed compensation decisions we identified. We evaluated how long it takes an ALJ to review a compensation request and issue a proposed decision to the commission and how long it takes the commission to issue the final decision. We found that for these decisions, the ALJs allocated an average of 41 hours of their time to complete a proposed compensation decision.

However, we also found that the ALJs did not always consider the compensation request promptly after the intervenor had filed it. On average, the ALJs did not review the compensation request until 81 days after the intervenor had filed it. In one case, the ALJ did not devote any time to preparing the compensation decision for approximately six months after the intervenor had requested compensation. Therefore, in this case, the commission had already exceeded the statutory deadline for issuing the compensation decision before the ALJ had even considered the compensation

³This pending case was decided on November 20, 1991, more than 14 months after the decision deadline required by law.

request. Furthermore, for the 11 cases we reviewed, the commission took an average of 65 additional days to issue the final decision after the ALJ had submitted the proposed decision.

Compensation decisions are late for many reasons, such as the need for the ALJ to request more information from the requester and to extend the comment period for the request or proposed decision. However, the primary reason they are late is that, despite statutory requirements, ALJs may give a higher priority to other matters than to a pending compensation request because their schedules contain many statutory deadlines for actions in various hearings and decisions.

We reviewed monthly assignment sheets for the commission's ALJs. We found that, during fiscal year 1990-91, ALJs carried a caseload of approximately 21 proceeding assignments per month. In addition, from our review of the proceedings for 38 completed compensation cases, we determined it took, on average, more than two years from the initial filing of the case to the commission's decision resolving the issues for which the intervenor sought compensation. Therefore, at any point in time, ALJs are often involved in several proceedings at various phases, each requiring them to balance different deadlines. According to an assistant chief ALJ, ALJs may give higher priority to other activities with specific statutory deadlines than to the statutory requirement for a compensation decision. Furthermore, the chief ALJ stated that because of the ongoing and often lengthy nature of some proceedings, ALJs must exercise judgement to balance competing workloads and priorities. However, we found no evidence the ALJs have the authority to disregard one statutory deadline to meet another.

Another reason compensation decisions are often late is because the Public Utilities Act requires intervenors to request compensation after the final order or decision in the case has been issued. As a result, by the time an ALJ receives a compensation request, the ALJ has moved on to other assignments. For instance, in one case, an ALJ stated that, when he received the compensation request, he had been reassigned and his calendar had already been filled for the next three months.

Compensation decisions may also be delayed because of required public comment periods. The Public Utilities Act requires a 30-day comment period after a compensation request has been filed, and the California Code of Regulations allows the intervenor 15 days to respond to any comments. An assistant chief ALJ stated that these requirements, along with the time necessary for internal review, leaves only a small window of time for the ALJ to write the proposed decision and still meet the statutory deadline. In addition, he stated an ALJ may extend the filing period for comments on the compensation request or for responses to the comments if any party involved in the proceeding, including intervenors, requests an extension.

In some cases, the intervenors' delays in responding to a request for additional documentation further prolonged the time necessary for the commission to render a compensation decision. The California Code of Regulations allows the ALJ to request additional documentation. However, the regulations do not provide an extension to the period in which the commission must render a decision. Although the ALJ could deny the request based on insufficient or procedurally defective documentation, an ALJ sometimes allows the intervenor to provide additional information necessary to evaluate the request. However, intervenors do not always provide the additional information promptly. In one case, for example, an ALJ requested additional information from the intervenor, but the intervenor did not provide the documentation for 12 months and, then, only after the ALJ issued a ruling to recommend the dismissal of the request if the information was not provided within 30 days. The intervenor then submitted the information, and the ALJ completed the compensation decision.

Finally, compensation decisions are late because the commission lacks a tracking system to monitor the compensation decision process or to ensure that compensation decisions are issued promptly. For example, in one of the cases we reviewed, a proceeding was reassigned to a different ALJ after the original ALJ retired from the commission. However, the intervenor filed the compensation request with the previously assigned ALJ. Because the request was misdirected, the newly assigned ALJ was not aware

of the request until an internal review of pending cases brought it to his attention; as a result, the ALJ did not begin reviewing the request until the 75-day decision period had almost expired. In another case, an intervenor filed a compensation request in February of 1989, and the commission issued a late compensation decision in June of 1989. However, the commission duplicated its efforts in this case. Twenty-one months later, the commission issued a different compensation decision on the same intervenor request. The second decision was prepared by a different ALJ from the ALJ who prepared the first decision. After the second compensation decision was issued, the intervenor notified the commission of the error and did not receive a duplicate payment.

The chief ALJ stated that the Division of Administrative Law Judges is considering options to make the compensation decision process more efficient. For example, she stated the division has recently begun work on a tracking system to monitor the status of intervenor eligibility and compensation requests. The plan includes developing a database to alert the division to any compensation cases that may be taking a long time to resolve. She also stated that the division's management is exploring the use of paralegal resources to reduce the time it takes to process intervenor requests. However, at the present time, the ALJ division has no paralegal positions.

When the commission fails to issue a compensation decision within the deadlines required by law, intervenors may have difficulty meeting financial obligations related to continued operations and participation in commission proceedings. For example, if intervenors are unable to predict when they will be paid for their contribution to a commission proceeding, they may not be able to meet financial obligations such as payment to expert witnesses or legal representatives. We surveyed 26 intervenors who had participated in commission proceedings. Twenty-one (81 percent) of the respondents stated they have had difficulty securing expert witnesses for commission proceedings because of the difficulty in predicting payment. In the case of late compensation decisions, the commission typically awards interest on the compensation amount during the period the compensation is late. However, one intervenor we interviewed stated the interest is

not sufficient consolation for a late decision because the intervenor must rely on compensation awards to meet short-term financial obligations such as rent and payroll.

Late compensation decisions can create financial hardship, especially for smaller intervenor groups. Moreover, if intervenors are not able to rely on prompt compensation decisions from the commission, credible intervenors may reduce or discontinue their participation in commission proceedings. Many of the intervenors we surveyed stated they have limited their participation in commission proceedings because of problems with the intervenor compensation program, including late compensation decisions. In addition, three intervenors stated they have discontinued their participation in proceedings at the commission because of difficulties in receiving compensation. When late compensation decisions reduce the ability of intervenors to participate in commission proceedings, the commission's goal of protecting the public's interest through intervenor participation may be adversely affected.

Untimely Compensation Requests

Section 1804(c) of the Public Utilities Act states that following the issuance of a final order or decision by the commission, an intervenor who seeks compensation and who has been found by the commission to be eligible to request compensation must file a request for an award within 30 days. The request must include, at a minimum, a detailed description of services and expenditures and a description of the intervenor's substantial contribution to the hearing or proceeding. The commission has interpreted "final order or decision" as an order or decision that resolves the issue(s) for which compensation is sought.

We reviewed 38 completed intervenor compensation cases and found that in 24 (63 percent) of the 38 cases, intervenors did not file a compensation request within 30 days of the case decision. However, the commission acknowledged and accepted the untimely requests for 18 (75 percent) of the 24 cases. The commission granted exceptions to the filing deadline for a variety

of reasons. For instance, in 12 cases, the intervenor had not been granted eligibility at the time of the case decision. The commission has ruled that an intervenor must have been deemed eligible before being obligated to request compensation. In one case, the ALJ accepted a stipulation agreement among the parties to extend the filing date. In 5 cases, the compensation requests were filed before the case decision for which the intervenor sought compensation. In 2 of these 5 cases, the ALJ specifically requested that intervenors file for compensation early to expedite the compensation decision.

In the remaining 6 of the 24 late compensation requests, the commission did not specifically grant exceptions for the filing deadlines. However, in none of the cases did the commission deny compensation based on the lateness of the filing. All of these requests were accepted by the commission and subsequently granted compensation. These 6 requests were filed an average of only 5 days beyond the 30-day requirement.

In addition to surveying intervenors about other matters, we also surveyed them to determine why their requests were sometimes late. Five (19 percent) of the 26 intervenors we surveyed stated that the extensive level of documentation required by the commission to support their claim of substantial contribution makes it difficult to meet the filing deadline.

If intervenors do not file prompt compensation requests, they risk having compensation denied. Although we did not identify any cases in which the commission denied an intervenor compensation because the request was late, it is clearly within the commission's authority to do so. In fact, we found no evidence that the commission has the authority to waive the filing deadlines although it often accepts untimely requests for the benefit of the intervenors. In addition, when intervenors file late compensation requests, ALJs may have more difficulty scheduling time to review the requests and write the compensation decisions because they have already been reassigned to other proceedings. This may further delay the intervenors' compensation payments.

Chapter 3 Intervenor Eligibility Time Requirements Lack Consistency or Purpose

Chapter Summary

Intervenors did not file requests for eligibility for compensation by the deadlines required by the law in 18 (35 percent) of 51 eligibility requests we reviewed. While current law requires the intervenor to file for eligibility for compensation at specific points in the proceeding, some intervenors appear to be confused about when these points occur because of the complexity of the proceedings and the uncertainty of statutory deadlines. Furthermore, in our review of 51 eligibility decisions, we found that the California Public Utilities Commission (commission) delivered its decisions on eligibility an average of nine months after the filing. Unlike guidelines for other intervenor programs, current law does not require the commission to respond to an intervenor's request for eligibility within a specified period. In 30 (65 percent) of the 46 decisions where the commission had issued both an eligibility and case decision, the commission did not determine the eligibility of intervenors for compensation until the date of issuance of the case decision in which they had participated, or later. As a result, because of the commission's delays in issuing eligibility decisions and because many intervenors request eligibility at the end of the proceeding, intervenors may complete their participation in a proceeding without knowing whether they are eligible to request compensation.

Background

The intervenor compensation program has two steps. First, an intervenor must request and receive a finding of eligibility for compensation from the commission. The intervenor's request must include documentation, including proof that participation in the proceeding will pose significant financial hardship to the

intervenor, a statement of issues the intervenor intends to present, an estimate of compensation sought, and a budget for the presentation. The intervenor must meet the requirement of showing significant financial hardship once each calendar year. However, the intervenor must present all other issues on a proceeding-by-proceeding basis. Then, after a final order or decision in a hearing or proceeding, an intervenor who has been granted eligibility by the commission may request a compensation award. The intervenor has 30 days to file this request following the final order or case decision.

Late Requests for Compensation Eligibility

The Public Utilities Code, Article 5, Section 1804, requires intervenors who seek compensation to file requests for a finding of eligibility within 30 days of the first prehearing conference or within 45 days of the close of the evidentiary record. A prehearing conference is called to schedule hearing dates, establish a service list, and give participants a chance to outline issues. Evidentiary proceedings resemble formal courtroom proceedings where parties present their evidence through testimony and exhibits. The code further states that in cases where there is no prehearing conference, or where the commission anticipates the proceeding will take less than 30 days, the commission may determine the procedure to be used for filing these requests. After the commission receives the eligibility request, it is required to make a ruling on the intervenor's eligibility before the intervenor can request compensation.

Like the commission, other state departments and commissions make provision for the participation of intervenor groups. However, the rules governing intervenor programs differ. One area of difference is the phase involving the eligibility request for compensation. Intervenors appearing before the State Energy Resources Conservation and Development Commission (SEC) must file a single request for eligibility annually. At the Department of Insurance (DOI), potential intervenors may submit a Notice of Intent to Claim Compensation at any time before the commencement of the proceeding. However, the guidelines also

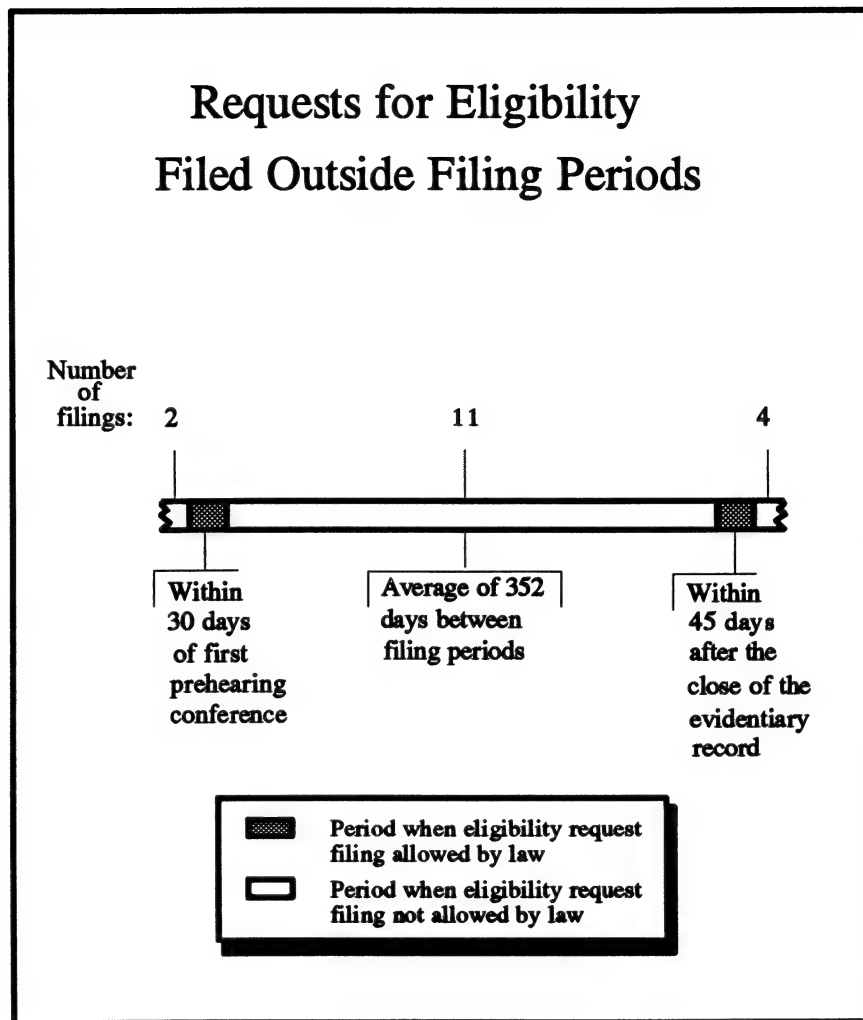
allow intervenors to file this notice at any time after the proceeding has begun once the intervenors have shown good cause. The intervenors are advised to file the notices at the earliest opportunity, preferably within 30 days after they take their first action in the proceeding.

The SEC and the DOI, through their compensation programs, encourage intervenors to file for eligibility before their participation. Consequently, the periods for determining eligibility in the DOI and SEC are driven by the intervenor's intent to enter and participate in the process. In contrast, the periods for requesting a finding of eligibility in commission proceedings are not driven by the intervenor's intent to participate but rather by specific events that occur during the proceeding. The Public Utilities Act allows intervenors to apply for eligibility either within 30 days of the first prehearing conference or within 45 days after the final presentation of the evidence in the proceeding but does not allow eligibility filing in between the two points.

Although current law identifies two points within a proceeding when an intervenor may file for eligibility for compensation, we found intervenors are not always filing for eligibility within the statutory deadlines at the two points. Of the 51 eligibility decisions we reviewed in pending and completed cases, 18 intervenors (35 percent) did not file their eligibility requests by the deadlines required by Section 1804 of the Public Utilities Act, although, ultimately, the commission granted eligibility to all intervenors. Eleven (61 percent) of the 18 intervenors filed for eligibility in between the two statutory deadlines. Moreover, 2 of the 18 intervenors filed before either of the dates, and only 4 of the 18 requested eligibility after both of the statutory deadlines had passed. We could not assess the timeliness of one request for eligibility since one of the statutory time frames was not applicable to the proceeding.

Figure 6 shows the time requirements for eligibility filing, and the 17 filings that occurred outside of these time frames in the 38 completed cases we reviewed. The figure also shows the average length of time that elapsed between the two filing periods for the cases in our review.

Figure 6



In lengthy and complex proceedings with multiple decisions and modifications, the end of the presentation of the evidence in the proceeding may not be easily identified, so an intervenor may not know when to file. For example, in one case, an intervenor asked the commission to establish a new deadline for its eligibility request because the intervenor was uncertain when either deadline for the filing of the request would occur. Moreover, some other intervenors participating in the program are not sure what the deadlines for seeking eligibility are. In a survey of 26 intervenors, 5 (19 percent) stated they were not fully aware of the legal deadlines for eligibility requests.

According to the chief administrative law judge (ALJ), the commission has always attempted to be liberal in construing intervenor compliance with the eligibility requirements, preferring to focus its energies on assessing the merits of the compensation decision. Furthermore, the chief ALJ stated that interpreting the phrase “within 30 days of the first prehearing conference or within 45 days after the close of the evidentiary record” can be a challenge when proceedings do not fit the procedural model the Legislature had in mind when drafting the current law. Many of these proceedings have more than one prehearing conference while others have multiple phases, each with a separate evidentiary segment. Therefore, not all proceedings will have identical deadlines.

The chief ALJ stated further that there may be confusion over the phrase “close of the evidentiary record.” The close of the evidentiary record generally refers to the point in time when the commission has ceased taking formal evidence. However, the taking of additional arguments, possibly in the form of oral arguments or briefs, after the commission has ceased taking formal evidence may extend the date of final case submission beyond the close of the evidentiary record. The chief ALJ stated that ALJs may have equated the case submission date with the “close of the evidentiary record.” Therefore, we conclude, if the definition is not clear, both intervenors and ALJs may be confused and may misinterpret which date should be used in determining the actual close of the evidentiary record.

Although intervenors did not meet the deadlines stated in law for 18 of the 51 eligibility requests we reviewed, the commission approved all requests. However, since statutory deadlines exist, if intervenors do not file their eligibility requests by the deadlines required by the law, they risk having their eligibility and subsequent compensation denied.

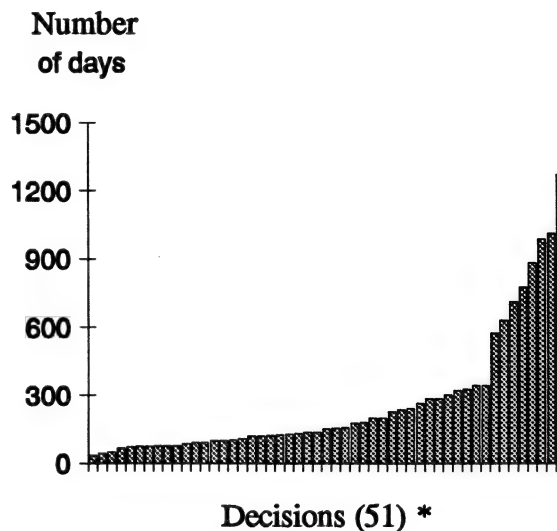
**No Requirement
to Respond to
Eligibility
Requests Within
a Specified Time**

Although the Public Utilities Code requires intervenors to request eligibility within specific times, the code does not specify when the commission must respond to the intervenors' requests. However, we reviewed the requirements and deadlines for the determination of compensation eligibility for two other state agencies with intervenor compensation programs and found that, at both the DOI and SEC, the agencies are required to respond to eligibility requests within a specified time. After accepting eligibility requests each April, the SEC is required to issue proposed decisions on all requests on or before each June 15. Similarly, after an intervenor files an eligibility request with the DOI, the commissioner is required to issue a preliminary determination of eligibility within 30 days of the request.

We found that much time elapses before the commission rules on intervenors' eligibility requests. Of the 51 eligibility decisions we reviewed, it took the commission an average of 266 days (approximately nine months) to issue a decision after the intervenor filed the request. In addition, of the 46 instances where the commission issued both an eligibility decision and final order or decision, the commission issued 30 (65 percent) of 46 eligibility decisions on or after the date the commission issued the final order or decision. Therefore, in these cases, the intervenors completed their participation in the proceeding without knowing if they would be eligible to request compensation. Figure 7 shows the length of time the commission took to issue eligibility decisions in the 51 eligibility decisions we reviewed.

Figure 7

Number of Days the Commission Took to Decide if an Intervenor Was Eligible to Request Compensation



* Not in chronological order

The lack of a requirement for the commission to issue a decision on an intervenor's eligibility within a specified time can result in intervenors participating in commission proceedings even though they may not be eligible to request compensation. During our review, we found only three instances when the commission denied eligibility to an intervenor. In one case, the commission denied eligibility to an intervenor approximately 5 months after the intervenor filed. In the second case, the commission denied an intervenor eligibility 10 months after filing. In the remaining case, the commission denied eligibility to an intervenor approximately 11 months after the intervenor filed.

Without a provision specifying a deadline for the commission to issue a ruling on an intervenor's eligibility request, an intervenor's compensation may be delayed. In one compensation case, six months after the intervenor had filed an eligibility request and three months after the intervenor filed its initial compensation request, the commission required the intervenor to refile its compensation request, in part because the commission had not ruled previously on the intervenor's eligibility. As a result, the intervenor's compensation decision was unnecessarily delayed while the commission determined the intervenor's eligibility and the intervenor refiled the compensation request.

An assistant chief ALJ stated that the commission may not issue determinations of eligibility in a more timely manner for a variety of reasons. First, the ALJ responsible for preparing a draft decision on eligibility may have more pressing matters to hear or decide. Second, the chief ALJ stated that given the commission's liberal application of filing deadlines for eligibility requests, the commission places greater emphasis on assessing the merits of compensation requests. Third, according to the chief ALJ, the time required to draft an eligibility decision and have it complete the internal chain of review before being placed on the commission's agenda can add weeks to the eligibility decision process. The chief further stated that this time period could be eliminated if the statute was amended eliminating the requirement for a commission ruling on intervenor eligibility.

Finally, in some cases, the eligibility request may be incomplete. Rather than summarily denying the request, the ALJ typically requests additional documentation from the intervenor to clarify the original request. However, even if the commission initially denies the intervenor's eligibility request, the ALJ may reconsider this decision upon receipt of supplemental information. For example, in one case, although the commission initially denied an intervenor's eligibility request, the commission granted eligibility to the intervenor after it filed an amended request.

Even if the commission finds an intervenor eligible for compensation in one proceeding, there is no guarantee that the intervenor will receive a positive determination of eligibility in a future proceeding. Therefore, since intervenors must be found eligible on a proceeding-by-proceeding basis, a timely eligibility decision by the commission is useful for intervenor participation. A finding of eligibility late in the process, or after the final order or case decision, may prevent the intervenor from making the best use of resources. For example, one participant filed for eligibility, spent time and resources on the case, yet was denied eligibility ten months later.

Since the eligibility filing requirements provide only two opportunities for intervenors to file, intervenors who do not participate near the first prehearing conference, or miss the first filing deadline, are required to wait until the end of the evidentiary hearings to file a timely eligibility request. If intervenors do not file until the end of the proceeding and if the commission does not issue eligibility decisions within a reasonable time, intervenors may participate in the process without any indication of whether the commission will find them eligible for compensation. In a survey of 26 intervenors, 11 (42 percent) responded that they have encountered difficulty in determining their eligibility status. Inability by intervenors to know their eligibility status may create confusion among intervenors.

Finally, if the commission does not determine eligibility before the 75-day deadline for issuing a compensation decision, the commission must spend additional time during that period making this determination. This may further delay the compensation decision and any subsequent payments to the intervenor.

Chapter 4 Conclusions and Recommendations

Chapter Summary

As explained in the preceding three chapters, some intervenors have been unwilling or unable to fully participate in proceedings of the California Public Utilities Commission (commission) because of problems inherent in the structure and implementation of the intervenor compensation program. As a result, the goal of the commission to protect the public's interest and provide the lowest reasonable rates may not be met.

The commission's methods of determining compensation limit the amount of intervenor compensation that may be received for intervenor participation in commission proceedings. Furthermore, the statutory requirement that intervenors in commission proceedings be compensated only after the commission has rendered a decision or order limits the commission's ability to allocate some allowance to intervenors before or during a proceeding. As a result, some intervenors indicated they have been unwilling or unable to participate in lengthy and complex commission hearings.

In addition, the commission's failure to meet statutory deadlines for compensation decisions further inhibits intervenor participation by delaying awards an average of four months. Some intervenors may lack resources necessary to begin participation in a new proceeding if they have not received compensation for prior participation.

The commission has failed to meet the statutory deadlines partly because each administrative law judge (ALJ) handles many complex cases with competing deadlines; therefore, the ALJs who write the decisions may give higher priority to other matters. In addition, the public comment period required for each compensation request and proposed decision and the internal review within the commission further reduces the time an ALJ has to write a decision. Furthermore, the commission lacks a tracking system to monitor the status of intervenor compensation requests. Moreover, when intervenors file late requests for compensation, ALJs may have more difficulty scheduling time to review the request and write the compensation decision.

Finally, if eligibility for compensation has not been established, the commission must first determine if intervenors are eligible before compensation can be awarded. Unclear definitions of requirements regarding when intervenors should file their eligibility requests and the absence of a requirement that the commission respond to the requests within a specific time may create confusion in the compensation process and may further delay compensation decisions.

To improve aspects of its intervenor compensation program, the commission should take the following actions:

- Continue to reimburse intervenors for the costs of documenting their substantial contribution as a reasonable expense of participation in commission proceedings;
- Continue to develop and implement a tracking system to ensure that ALJs are aware of deadlines for compensation decisions;
- Require its ALJs to complete proposed compensation decisions in time to allow necessary internal review and public comment before the 75-day deadline required by law;


- Ensure that both intervenors and ALJs are aware of the dates for filing eligibility and compensation requests; and
- Issue an eligibility decision before the compensation decision.

To ensure that the legislative intent of the intervenor compensation program is being achieved, the Legislature should take the following actions:

- Determine whether the current definition of substantial contribution and the commission's application of this definition are consistent with the intent of the program;
- Determine whether the commission's current practice of prorating intervenors' expenses by the intervenors' degree of success on each issue in which they participate is consistent with the intent of the program;
- Determine whether advanced funding should be provided to intervenors and, if so, develop an alternative funding mechanism to provide initial start-up loans or interim loans, or both, to credible intervenors;
- Determine whether there is a necessity for restricting when intervenors can file eligibility requests for compensation with the commission;
- Determine whether there is a necessity for requiring a commission ruling to establish an intervenor's eligibility to request compensation; and
- Require the commission to rule on eligibility requests within a specified time.

We conducted this review under the authority vested in the auditor general by Section 10500 et seq. of the California Government Code and according to generally accepted governmental auditing standards. We limited our review to those areas specified in the audit scope section of this report.

Respectfully submitted,


KURT R. SJOBERG
Auditor General (acting)

Date: January 6, 1992

Staff: Samuel D. Cochran, Audit Manager
Daniel M. Claypool
Charles W. Kilbourne
Colin A. Miller

Appendix A Intervenor Compensation Awards Granted By the Commission Since 1981

The following two tables present the total compensation awards the California Public Utilities Commission (commission) granted to intervenors from January 1, 1981, through November 30, 1991. Table A-1 presents all compensation awards the commission granted under Article 5, Sections 1801 through 1808 of the Public Utilities Act for proceedings commencing on or after January 1, 1985. Table A-2 presents all awards the commission granted to intervenors before, or according to, Title 20, Article 18.6 of the California Code of Regulations for proceedings commencing before January 1, 1985. Although the proceedings commenced before this date, some of the awards were not granted until several years later.

**Table A-1 Intervenor Compensation Awards Granted By
the California Public Utilities Commission
According to the Public Utilities Act
Article 5, Section 1801 Through 1808
For Proceedings Commencing on or After January 1, 1985**

	Award Amount	Intervenor	Case Proceeding Number
1991 Awards:	\$ 155,728	Public Advocates	A.85-01-034
July 1 -	13,503	Toward Utility Rate	
November 30*		Normalization (TURN)	A.88-12-005
	12,017	TURN	A.90-02-060
	12,084	Consumer Action	A.89-09-012
	67,865	TURN	A.89-08-024
	667	Utility Consumers' Action	
		Network (UCAN)	A.90-10-003
	18,123		C.87-03-032
	44,100	Greg Bowers	A.90-08-066
	20,000	TURN	A.90-08-066
	11,082	TURN	I.88-04-029
	11,549	Consumer Action	I.88-04-029
	4,163	TURN	A.90-06-061
	33,079	TURN	A.90-08-029
	48,852	Center for Public Interest	
		Law (CPIL)	I.87-11-033
	55,527	TURN	I.87-11-033
January 1 -			
June 30 **	5,731	TURN	A.87-01-002
	18,977	TURN	A.90-03-018
	18,691	TURN	A.90-04-003
	65,427	TURN	A.90-04-034
	20,528	UCAN	A.90-10-003
1990 Awards:	79,540	TURN	A.88-09-032
	23,292	Natural Resource Defence	
		Council (NRDC)	I.86-10-001
	17,862	TURN	I.86-10-001
	108,119	TURN	A.88-12-005
	13,937	Energy Resource Advocates	A.88-12-005
	3,323	Allied Temporaries, Inc.	C.88-08-048
	40,510	TURN	A.89-05-064
	11,988	UCAN	A.89-09-031
	130,048	Public Advocates	I.85-04-047
	1,870	Graeagle Property Owners	
		Association	A.88-09-033
	7,542	TURN	A.85-01-034
	4,121	Public Advocates	I.85-04-047

*These awards were issued between July 1, 1991, and November 30, 1991, after the end of our review period.

**Awards from January 1, 1991, through June 30, 1991.

Continued on Next Page

Appendix A

	Award Amount	Intervenor	Case Proceeding Number
1989 Awards:	245,374	TURN	I.86-06-005
	3,564	NRDC	I.86-10-001
	13,264	TURN	A.86-12-047
	24,742	Public Advocates	A.87-01-002
	729	Public Advocates	A.87-12-003
	19,119	TURN	A.88-04-020
	3,204	Public Advocates	A.86-12-047
	1,767	TURN	I.85-04-047
	30,706	Power Users Protection Council (PUPC)	A.86-04-012
1988 Awards:	33,446	TURN	A.86-04-012
	59,298	TURN	A.86-03-030
	16,897	UCAN	A.87-04-018
	40,134	Public Advocates	A.85-12-050
	14,004	NRDC	I.86-10-001
	18,323	TURN	A.87-05-007
	33,957	TURN	A.85-11-029
	55,670	TURN	A.85-01-034
	2,038	Rate Watchers	A.87-12-003
	3,582	CPIL	A.87-12-003
	52,118	UCAN	A.87-12-003
1987 Awards:	59,321	Public Advocates	A.85-11-029
	18,612	TURN	A.86-09-030
	52,564	TURN	A.85-01-034
	58,978	CPIL	A.85-01-034
	38,047	TURN	A.85-11-029
	22,599	UCAN	A.85-06-003
1986 Awards:	18,095	TURN	A.85-09-034
	22,388	TURN	A.85-09-062
	18,965	TURN	A.85-03-045
	7,316	TURN	I.85-02-051
	3,026	TURN	A.L. 1610
1985 Awards:	2,025	TURN	C.85-04-048
Total	\$2,073,717		

**Table A-2 Intervenor Compensation Awards Granted By
the California Public Utilities Commission
Before the Adoption of Sections 1801
Through 1808 of the Public Utilities Act
For Proceedings Commencing Before January 1, 1985**

	Award Amount	Intervenor	Case Proceeding Number
1990 Awards:	\$ 5,418	Save Our Streams	I.84-04-077
1989 Awards:	8,773	Utility Consumers' Action Network (UCAN)	A.84-12-015
	13,336	Redwood Alliance	A.84-06-014
	35,000	San Luis Obispo Mothers for Peace	A.84-06-014
1988 Awards:	44,495	Toward Utility Rate Normalization (TURN)	A.82-09-12
1987 Awards:	78,388	Redwood Alliance	A.84-06-014
	9,601	TURN	A.84-02-011
	1,488	TURN	A.83-07-02
1986 Awards:	46,638	Environmental Defense Fund (EDF)	OII 26
	4,487	TURN	A.84-03-030
	818	TURN	A.84-09-050
	5,390	TURN	A.84-04-028
	500	Redwood Alliance	A.83-09-049
	39,570	TURN	A.83-03-036
	14,244	TURN	A.84-02-11
	8,160	UCAN	A.84-07-027
	188,458	EDF	A.82-11-43
	64,233	UCAN	A.84-12-015
	6,463	Dr. Robert E. Brylawski	A.84-08-049
	5,570	TURN	A.83-07-02
	39,525	Redwood Alliance	A.83-09-049
	19,229	TURN	A.82-12-048
1985 Awards:	52,180	TURN	A.84-02-025
	898	TURN	A.84-08-067
	403	Dr. Robert E. Brylawski	A.83-01-22
	1,762	TURN	A.83-07-02
	5,580	TURN	A.83-01-012
	22,368	TURN	A.84-08-067
	2,063	TURN	A.83-12-30
	14,645	TURN	A.83-07-012
	6,669	TURN	A.84-04-028
	15,917	TURN	A.84-03-07
	14,585	TURN	A.83-01-22
	804	Dr. Robert E. Brylawski	A.83-01-22

Continued on Next Page

	Award Amount	Intervenor	Case Proceeding Number
1984 Awards:	201,143	Sonitrol of Fresno, Inc. and Sonitrol Security, Inc.	C.10916
	2,000	Edward J. Nuener	A.82-12-57
	48,815	TURN	A.82-12-48
	8,800	TURN	A.83-08-38
	13,102	TURN	A.83-04-19
	20,539	Welfare Rights Organization	A.82-12-57
1983 Awards:	24,650	TURN	A.60153
1982 Awards:	48,656	TURN	A.60560
	43,317	TURN	A.60153
1981 Awards:	44,383	TURN	A.58605
	35,100	Consumers Lobby Against Monopolies (CLAM)	C.10066
Total:	\$1,268,163		

Appendix B A Review of the Cost of Commission, Utility Company, and Intervenor Participation in Six Selected Commission Decisions

In this appendix, we present a review of the costs reported to us for participation by the California Public Utilities Commission (commission), utilities, and customer intervenors in the proceedings leading to six commission decisions. We did not audit these figures.

Methodology The commission's Management Services Division reported the commission's costs. The amounts include the costs for employee benefits, such as sick leave and health benefits, but do not include overhead costs, such as clerical staff, administrative staff, or maintenance and building expenses.

The expenses the utility companies reported were requested through the commission, using the commission's regulatory authority over these entities. For each proceeding, we requested that the utilities involved report their total expenses from the filing of the application through the date of the decision in which the intervenor was compensated. We requested that the utilities provide a breakdown of the compensation for attorneys, expert witnesses, other staff, and all other costs. In addition, we requested total hours billed, the hourly salary or rate of compensation, the multiplier used to calculate the total costs, and an explanation of how the multiplier was formulated. In response, three utilities involved in one proceeding that began during October 1986 each stated they were unable to provide the requested information for that proceeding because their accounting systems had not accumulated the information in a way that would allow

them to report the costs. In addition, one of the utility companies did not provide its costs of participation in another of the proceedings because it did not record the information in a way that would allow it to retrieve the information without a special study. The utility estimated the special study would require several months and significant effort to complete.

The expenses reported by the intervenors were taken from the compensation requests filed with the commission and may not reflect the actual amount intervenors may have spent during the proceedings. The intervenors may not have requested compensation for all their expenses. Intervenors sometimes exclude expenses when they cannot justify a portion of their expenses under the commission's requirements for proving substantial contribution. (See Chapter 1, page 19, for additional information on these requirements.) Moreover, the expenses reported in the following tables do not reflect the amount the commission may have awarded to the intervenor after the commission's scrutiny of the request.

We indicate in the tables where information was not provided. The table information is divided into five categories: judicial expenses, which are only applicable to the commission; advocate and attorney expenses; expert witnesses; other staff; and other costs.

**Limitations to the
Comparability
of the Data**

When reviewing these costs, the reader should use caution in making comparisons. In some instances, such as the breakdown of attorney fees by the hour, it may not be possible to compare the hourly compensation paid to attorneys, both within and across proceedings. Factors such as the difference in the formulation of the loading multipliers used by the utility companies and the difference in the time periods in which the attorneys participated make a comparison of the hourly rates potentially deceptive.

Furthermore, the cost of participation for the commission, utilities, and customer intervenors varies significantly because of the varying degrees of participation in the proceedings by each entity. Utility companies represent their positions across the entire spectrum of the proceeding, whether their positions are contested or not. This requirement can necessitate the use of expert witnesses, counsel, and a variety of internal staff.

By contrast, the commission has differing responsibilities in the proceedings. The commission's Division of Administrative Law Judges (division) is responsible for adjudicating the proceeding. The commission's Division of Ratepayer Advocates (DRA) is responsible for representing the long-term interests of all ratepayers of utility companies on each point in the proceeding. The Commission Advisory and Compliance Division advises the commission on a wide range of financial, economic, engineering and regulatory issues that may affect a proceeding. The commission's Legal Division represents the DRA in the proceedings and counsels the commission and its staff. Also, the commission's public advisor provides information and advice to any intervenor who wishes to participate in a commission proceeding.

Finally, intervenors may make a contribution to the commission's decisions on particular issues only. Although the intervenor should be aware of what is occurring in a proceeding and will have costs associated with the function of monitoring the proceeding, the overall costs of participation are generally less than those for the utilities or the commission.

Comparison of the costs incurred by the commission, Natural Resources Defense Council (NRDC), which is the intervenor in the case, and three utility companies: Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas and Electric Company.

Table B-1 Proceeding Number I.86-10-001

	Commission	Utility Company	Intervenor
Judicial:			
Total hours	526		
Range of hourly rate	\$15-\$42		
Total costs	\$18,238	NA	NA
Advocate and Attorney:			
Total hours	2,012		85
Range of hourly rate	\$15-\$39		\$ 150
Total costs	\$51,286	Not Reported	\$12,765
Expert Witness:			
Total hours			
Total costs	\$ 0	Not Reported	\$ 0
Other Staff:			
Total hours	521		175
Total costs	\$17,059	Not Reported	\$14,000
Other Costs:	\$ 0	Not Reported	\$ 442
Total Costs:	\$86,583	Not Reported	\$27,207

Comparison of the costs incurred by the commission, Toward Utility Rate Normalization (TURN), which is the intervenor in the case, and Southern California Edison Company.

Table B-2 Proceeding Number A.87-05-007

	Commission	Utility Company	Intervenor
Judicial:			
Total hours	454		
Range of hourly rate	\$14-\$47		
Total costs	\$15,607	NA	NA
Advocate and Attorney:			
Total hours	996	1,709	171
Range of hourly rate	\$14-\$33	\$ 43-\$92	\$ 125
Total costs	\$27,850	\$115,230	\$21,350
Expert Witness:			
Total hours			201
Total costs	\$ 0	\$ 0	\$25,100
Other Staff:			
Total hours	64	382	Not Reported
Total costs	\$ 2,482	\$ 10,478	\$ 2,194
Other Costs:	\$ 0	\$ 0	\$ 1,877
Total Costs:	\$45,939	\$125,708	\$50,521

Comparison of the costs incurred by the commission, Graeagle Property Owners Association, which is the intervenor in the case, and Graeagle Water Company.

Table B-3 Proceeding Number A.88-09-033

	Commission	Utility Company	Intervenor
Judicial:			
Total hours	438		
Range of hourly rate	\$15-\$41		
Total costs	\$11,241	NA	NA
Advocate and Attorney:			
Total hours		69	
Range of hourly rate		\$ 150	
Total costs	\$ 0	\$10,275	\$ 0
Expert Witness:			
Total hours			Not Reported
Total costs	\$ 0	\$ 0	\$1,870
Other Staff:			
Total hours	88	470	
Total costs	\$ 2,625	\$22,445	\$ 0
Other Costs:	\$ 0	\$ 1,331	\$ 0
Total Costs:	\$13,866	\$34,051	\$1,870

Comparison of the costs incurred by the commission, Toward Utility Rate Normalization (TURN), which is the intervenor in the case, and Southern California Gas Company.

Table B-4 Proceeding Number A.90-03-018

	Commission	Utility Company	Intervenor
Judicial:			
Total hours	892		
Range of hourly rate	\$ 16-\$50		
Total costs	\$ 33,732	NA	NA
Advocate and Attorney:			
Total hours	1,272	1,092	87
Range of hourly rate	\$ 20-\$42	\$ 85-\$185	\$140-\$175
Total costs	\$ 33,064	\$ 166,221	\$15,057
Expert Witness:			
Total hours			48
Total costs	\$ 0	\$ 0	\$ 3,030
Other Staff:			
Total hours	1,869	22,263	
Total costs	\$ 57,149	\$1,064,656	\$ 0
Other Costs:	\$ 0	\$ 101,117	\$ 890
Total Costs:	\$123,945	\$1,331,994	\$18,977

Comparison of the costs incurred by the commission, Toward Utility Rate Normalization (TURN), which is the intervenor in the case, and Pacific Gas and Electric Company.

Table B-5 Proceeding Number A.90-04-003

	Commission	Utility Company	Intervenor
Judicial:			
Total hours	878		
Range of hourly rate	\$ 16-\$58		
Total costs	\$ 31,852	NA	NA
Advocate and Attorney:			
Total hours	4,680		99
Range of hourly rate	\$ 19-\$44		\$ 160
Total costs	\$142,688	Not Reported	\$15,792
Expert Witness:			
Total hours			
Total costs	\$ 0	Not Reported	\$ 2,010
Other Staff:			
Total hours	1,185		
Total costs	\$ 41,984	Not Reported	\$ 0
Other Costs:	Not Reported	Not Reported	\$ 889
Total Costs:	\$216,524	Not Reported	\$18,691

Comparison of the costs incurred by the commission, Utility Consumer's Action Network (UCAN), which is the intervenor in the case, and San Diego Gas and Electric Company.

Table B-6 Proceeding Number A.90-10-003

	Commission	Utility Company	Intervenor
Judicial:			
Total hours	514		
Range of hourly rate	\$ 17-\$51		
Total costs	\$ 20,007	NA	NA
Advocate and Attorney:			
Total hours	6,097	1,001	107
Range of hourly rate	\$ 20-\$42	\$ 40-\$79	\$ 135
Total costs	\$186,571	\$ 78,950	\$14,459
Expert Witness:			
Total hours		2,687	102
Total costs	\$ 0	\$123,052	\$ 5,615
Other Staff:			
Total hours	722	2,098	
Total costs	\$ 24,731	\$ 75,809	\$ 0
Other Costs:	\$ 0	\$ 27,325	\$ 1,094
Total Costs:	\$231,309	\$305,136	\$21,168

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298



December 16, 1991

Kurt R. Sjoberg
Auditor General (Acting)
660 J Street, Suite 300
Sacramento, CA 95814

Dear Mr. Sjoberg:

Thank you for the opportunity to review and comment upon the draft audit report on the Public Utilities Commission's Intervenor Compensation Program. Although the limited comment time does not allow for a formal Commission response, we offer the following comments.

As the audit report states, the Commission recognizes that effective public participation in its proceedings is an essential element in promoting the public interest. In 1981, the Commission established a broad and ambitious program to award intervenor compensation. During the past decade, the Commission has made every effort to ensure broad participation and to provide compensation to the full extent allowed by law. As the audit report records, the Commission has awarded approximately \$2,833,541 to intervenors between January 1, 1981 and June 30, 1991.

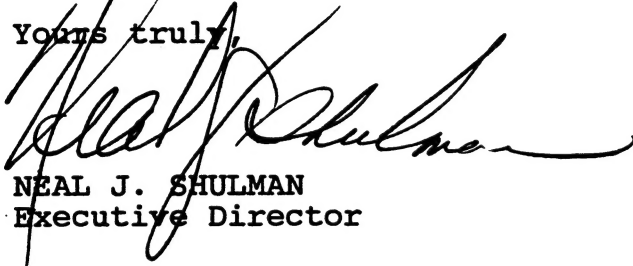
We agree with the basic finding of the audit report that this Intervenor Compensation Program can be improved. As with any complex statutory program which seeks to promote important public interests, there is always room for improvement. We have implemented a special tracking system to improve the timeliness of our intervenor-funding decisions, we are working to ensure that parties and ALJs are aware of all specific dates and deadlines, and we will strive to issue a decision on eligibility before we issue a decision on compensation (provided that the request for eligibility is filed in the first filing window).

The findings of the audit report accurately describe the timeliness of compensation decisions over a three year period. These 38 decisions were among more than 2600 Commission decisions, involving more than \$10 billion in utility revenues. We do not diminish in any way the importance of the particular cases examined by the Auditor General. However, given the magnitude of our overall workload, the Commission and its staff work hard to fulfill all of our statutory obligations within the time and resources available.

December 16, 1991
Kurt R. Sjoberg
Page 2

We therefore welcome the recommendations of the audit report. It will help to streamline our process, reduce unnecessary statutory restrictions and perhaps provide additional resources to expedite the process.

Yours truly,

A handwritten signature in dark ink, appearing to read "Neal J. Shulman", is written over the typed name and title. The signature is fluid and cursive, with a long horizontal stroke at the end.

NEAL J. SHULMAN
Executive Director

**cc: Members of the Legislature
Office of the Governor
Office of the Lieutenant Governor
State Controller
Legislative Analyst
Assembly Office of Research
Senate Office of Research
Assembly Majority/Minority Consultants
Senate Majority/Minority Consultants
Capitol Press Corps**